

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

1 UNITED STATES OF AMERICA, ) **Case No. 3:20-CR-0008-E-1**  
2 )  
3 Plaintiff, )  
4 ) Dallas, Texas  
5 v. ) January 10, 2020  
6 ) 2:00 p.m.  
7 ROBERT BURNEY CAPPS, )  
8 ) INITIAL APPEARANCE  
9 Defendant. ) ARRAIGNMENT  
10 )

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE IRMA CARRILLO RAMIREZ,  
UNITED STATES MAGISTRATE JUDGE.

11 APPEARANCES:

12 For the Government: Lindsey E. Beran  
13 UNITED STATES ATTORNEY'S OFFICE  
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17 For the Defendant: J. Craig Jett  
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19 900 Jackson Street, Suite 330  
20 Dallas, TX 75202  
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22 For U.S. Probation: Officer Perez

23 Court Recorder: Marie Castañeda  
24 UNITED STATES DISTRICT COURT  
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transcript produced by transcription service.

1                   DALLAS, TEXAS - JANUARY 10, 2020 - 2:07 P.M.

2                   THE COURT: Michael Ray Schneider.

3                   MR. SMITH: Matt Smith for the United States.

4                   THE COURT: And if I could have Mr. Robert Capps  
5 please stand where you are. All right.

6                   Gentlemen, I am going to advise you both of your  
7 constitutional rights. You have the right to remain silent.  
8 You are not required to make any statement about any charge  
9 against you. If you have made a statement, you're not  
10 required to say any more. If you start to make a statement,  
11 you may stop at any time. Any statement made by you can later  
12 be used against you.

13                  You have the right to the assistance of an attorney at all  
14 stages of the proceedings. If you cannot afford an attorney,  
15 one will be appointed for you.

16                  Mr. Capps, you may have a seat. I'll come back to your  
17 case in a few moments.

18                  (Off the record, 2:07 p.m. to 2:12 p.m.)

19                  THE COURT: All right. Mr. Capps. Mr. Capps, did  
20 you hear and understand the constitutional rights that I  
21 explained at the beginning of the hearing?

22                  THE DEFENDANT: Yes, Your Honor.

23                  THE COURT: Have you gotten a copy of the indictment  
24 against you?

25                  MR. JETT: Judge, he has that. I received one this

1 morning.

2 THE COURT: All right. Have you discussed it with  
3 him?

4 MR. JETT: We've not had an opportunity to do that  
5 because I received it after he was detained by the Marshals  
6 this morning or by the HSI this morning and we just haven't  
7 had time to do that.

8 THE COURT: Even before court this afternoon when he  
9 was brought down to the courtroom?

10 MR. JETT: No, ma'am. I suppose I -- so I just had a  
11 couple of minutes and it requires some explanation and so I --  
12 if the Court would like me to do that now, I will.

13 THE COURT: The alternative would be to have the  
14 Government summarize the charges for him.

15 MR. JETT: I could take a minute and explain to him  
16 what the charges are. I think he has a pretty good idea.  
17 There was -- but, technically, we didn't know 'til I saw the  
18 indictment.

19 THE COURT: All right.

20 MR. JETT: Would you like me to take a minute and do  
21 that?

22 THE COURT: Mr. Werbner, are you done with your  
23 client?

24 MR. WERBNER: We are. There's still a signature --

25 THE COURT: There is? All right. Why don't you have

1 a seat over here with Mr. Capps. Let me have Mr. Werbner.  
2 And I may go on to my detention hearing before I come back to  
3 your case.

4 MR. JETT: Okay.

5 THE COURT: All right? Mr. Werbner?

6 MR. JETT: Thanks, Your Honor.

7 (Off the record, 2:14 p.m. to 3:06 p.m.)

8 THE COURT: Can we get Mr. Capps back to the podium,  
9 please?

10 MS. BERAN: I don't believe I made my appearance  
11 earlier. Lindsey Beran for the Government, Your Honor.

12 THE COURT: All right. Let's basically start over.  
13 Mr. Capps, you heard the constitutional rights I explained at  
14 the beginning of the initial appearance hearing, did you not?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And do you understand those  
17 constitutional rights?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Have you now had an opportunity to review  
20 the indictment with your attorney?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand what it is that you are  
23 accused of in this document?

24 THE DEFENDANT: I do.

25 THE COURT: I have the entry of appearance for Mr.

1 Jett, so you do not need appointed counsel; is that correct?

2 THE DEFENDANT: Correct, ma'am.

3 THE COURT: All right. What's the Government's  
4 position on the issue of bond?

5 MS. BERAN: Your Honor, the Government has no  
6 objection to release of this Defendant on PR bond, with the  
7 conditions mandated by law and the recommendations by Pretrial  
8 Services.

9 THE COURT: All right. The Government is not moving  
10 to detain you, Mr. Capps, so I will be releasing you subject  
11 to a number of conditions, which are as follows, and some are  
12 mandated by law.

13 You are not to violate federal, state, or local law while  
14 on release.

15 You are to advise the Court or the Pretrial Services  
16 Office in writing before any change in address or telephone  
17 number.

18 You are to appear in court as required and to surrender  
19 for service of any sentence imposed as directed.

20 Your next court appearance will be your trial. We'll  
21 conduct your arraignment in a few moments.

22 In addition to that, I am ordering pretrial supervision.  
23 You will be required to report to the supervising Pretrial  
24 Services officer as directed.

25 You are to continue or actively seek employment.

1 I understand you do have a passport?

2 MR. JETT: That has been turned over to the HSI  
3 agents, Your Honor.

4 THE COURT: All right. Does the Government have the  
5 passport?

6 MS. BERAN: We do. We'll make sure it gets to the  
7 Clerk's Office, Your Honor.

8 THE COURT: All right. You are not to get a new  
9 passport or other type of travel document.

10 I am restricting your travel to the Northern District of  
11 Texas.

12 MR. JETT: May I ask a question, Your Honor?

13 THE COURT: You may.

14 MR. JETT: Mr. Capps has occasion to have to travel  
15 for work, and that would be outside the state. Is that  
16 something I'd take up with you, or should I take that up with  
17 Judge Brown?

18 THE COURT: Well, you're going to have to file a  
19 motion, but let me finish the conditions and then you can  
20 consider whether that's going to be feasible or not.

21 MR. JETT: Yes, ma'am.

22 THE COURT: All right. I am putting you on location  
23 monitoring, with a curfew to be set by your Pretrial Services  
24 officer.

25 You're not to possess any firearms, destructive devices,

1 or other dangerous weapons. Do you have any weapons in your  
2 home?

3 THE DEFENDANT: Not at the moment, Your Honor.

4 THE COURT: All right. You're not to possess any  
5 weapons. They're not to be in your home, whether or not  
6 they're yours.

7 THE DEFENDANT: Understood, Your Honor.

8 THE COURT: All right. You are to pay all or part of  
9 the costs of monitoring based on your ability to pay as  
10 determined by Pretrial Services, and you're to report as soon  
11 as possible to Pretrial Services any contact with law  
12 enforcement, including arrests, questioning, or traffic stops.

13 In addition to that, you are not to have any form of  
14 unsupervised contact with persons under the age of 18 at any  
15 location, including but not limited to your residence, place  
16 of employment, and public places where minors frequent or  
17 congregate, without prior permission of the probation officer.

18 You are not to possess or have under your control any  
19 pornographic, sexually-oriented, or sexually-stimulating  
20 materials, including visual, auditory, telephonic, or  
21 electronic media, computer programs, or services. You're not  
22 to patronize any place where such material or entertainment is  
23 available, and you're not to use any sex-related telephone  
24 numbers.

25 You are to participate and comply with the requirements of

1 the Computer and Internet Monitoring Program, contributing to  
2 the costs of monitoring in an amount not to exceed \$40 per  
3 month.

4 As part of that program, you shall consent to the  
5 probation officers conducting ongoing monitoring of your  
6 computers. This may include the installation of hardware or  
7 software systems that allow for evaluation of computer use.  
8 You shall not remove, tamper with, reverse-engineer or  
9 circumvent the software in any way. You shall only use  
10 authorized computer systems that are compatible with the  
11 software and/or hardware used by the Computer and Internet  
12 Monitoring Program.

13 You are to permit the probation officer to conduct a  
14 preliminary computer search prior to the installation of  
15 software, and the monitoring software may be removed at any  
16 time during the term of supervision, at the discretion of the  
17 probation officer.

18 You're to submit to periodic unannounced examination of  
19 your computers, storage media, and/or other electronic or  
20 Internet-capable devices performed by the probation officer at  
21 a reasonable time and in a reasonable manner based on  
22 reasonable suspicion of contraband evidence in violation of  
23 supervision.

24 This could include the retrieval and copying of any  
25 prohibited data and/or the removal of such systems for the



1 purpose of conducting a more thorough inspection. You shall  
2 provide written authorization for release of information from  
3 your Internet Service Provider.

4 You're not to use any computer other than the one that  
5 you're authorized to use without prior approval from the  
6 probation officer.

7 You're not to use any software program or device designed  
8 to hide, alter, or delete records or logs of your computer  
9 use, Internet activities, or files stored on your computer.

10 You're not to maintain or create a user account on any  
11 social networking site that allows access to persons under the  
12 age of 18 or allows the exchange of sexually-explicit  
13 material, chat conversations, or instant messaging.

14 You're not to view or access any web profile of any users  
15 under the age of 18.

16 You're not to use or possess any gaming consoles or  
17 devices without prior permission from the probation officer.  
18 This includes but is not limited to Xbox, PlayStation, or  
19 Nintendo.

20 You're not to use or possess a web cam or any other  
21 hardware that allows for the exchange of video or photographs  
22 online.

23 You're not to access any service or use any software that  
24 allows for the direct peer-to-peer contact that may include  
25 chat rooms, file sharing, or other similar activity without

1 permission from the probation officer.

2 You shall not use or own any device that allows Internet  
3 access other than what's authorized by the Probation Office.  
4 This includes but is not limited to PDAs, electronic games,  
5 and cellular digital telephones.

6 You're not to engage in or utilize any service that allows  
7 peer-to-peer file sharing or File Transfer Protocol activity,  
8 and you will be required to log onto your authorized computer  
9 using an assigned user name and biometric user authentication.

10 Do you understand the conditions that I am imposing for  
11 your release?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: Are there any other conditions that the  
14 Government asks the Court to consider?

15 MS. BERAN: Not at this time, Your Honor.

16 THE COURT: The law requires that I tell you what  
17 could happen if you don't follow the conditions I've set for  
18 you.

19 Failing to appear in court as required is a separate crime  
20 for which you may be sentenced to imprisonment. If you  
21 violate any condition of release, a warrant can be issued for  
22 your arrest, you can be jailed until trial, and also  
23 separately prosecuted for contempt of court.

24 If you commit another crime while you are on pretrial  
25 release, that could lead to more severe punishment than you

1 would otherwise receive if you committed that same crime at  
2 any other time.

3 It is a crime to try to influence, threaten, attempt to  
4 bribe, or retaliate against any juror, witness, or other  
5 person who may have information about the case or to otherwise  
6 obstruct the administration of justice. There are fines and  
7 prison terms associated with these violations.

8 Do you understand what could happen if you don't follow  
9 the conditions I've set for you?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: I have signed an order that you be  
12 released after processing. There's a place on the third page  
13 for your signature. Take your time to go over that order with  
14 Mr. Jett. Ask him any questions. I will be happy to answer  
15 any questions.

16 By signing this order, you will be telling the Court that  
17 you fully understand your conditions, you agree to follow  
18 those conditions, and you understand what could happen if you  
19 don't. Later on, if any violation is shown, I'll know that  
20 it's not the result of a lack of understanding, because we're  
21 both going to be comfortable before you leave here today that  
22 you do fully understand those conditions. I'll take that as  
23 an indication that you choose not to follow my conditions, and  
24 I can revoke you on that basis.

25 That is a federal court order that governs your release

1 while you are awaiting trial on very serious federal criminal  
2 charges, so any violation of that order, no matter how  
3 technical, is still a violation of a federal court order,  
4 which I take very seriously.

5 You should know that I am considered a zero-tolerance  
6 policy judge. Do you understand that?

7 THE DEFENDANT: Yes, Your Honor, I do.

8 THE COURT: All right. Mr. Jett, you may go over the  
9 order with Mr. Capps there at the podium or over here. I'm  
10 going to come back to Mr. McGuinnie while you do that.

11 MR. JETT: I think we should go over here.

12 I do have a question, if I could.

13 THE COURT: Certainly.

14 MR. JETT: You used the term "location monitoring,"  
15 and that is not a term I am familiar with, so I don't know  
16 what that means or how that's imposed, if it -- I am familiar  
17 with electronic monitoring, which is an ankle monitor. So, is  
18 that that, or is it something else?

19 THE COURT: It could be that, or it could be whatever  
20 -- the use of the term "location monitoring" gives the  
21 Pretrial Services officer some discretion to use the best type  
22 of equipment for the circumstances. It may be a GPS monitor.  
23 It may be some other type of monitoring other than the ankle  
24 monitor.

25 MR. JETT: Okay. And --

1           THE COURT: But it will be a system to monitor his  
2 location.

3           MR. JETT: Okay. And I understand that.

4           THE COURT: Uh-huh.

5           MR. JETT: Our concern was travel. And if it's -- if  
6 it's an ankle monitor, it might prohibit travel. If there's  
7 some other kind, it may not. And so if I should take that up  
8 with Probation, I'm happy to do so.

9           THE COURT: You'll need to take that up to Probation,  
10 but it is very difficult to monitor someone while they're  
11 traveling, and so traveling is generally not permitted.

12          MR. JETT: I understand. We'll take it up with  
13 Probation; then with Judge Brown if we have to do that.

14          THE COURT: All right. Because there is an  
15 alternative to not traveling.

16          MR. JETT: Well, I understand that alternative, but I  
17 think that we can find a happy medium somewhere.

18          THE COURT: He's not in a position to negotiate at  
19 this point.

20          MR. JETT: I'm not negotiating; I'm just looking for  
21 solutions.

22          THE COURT: Sure. But the Adam Walsh conditions are  
23 mandated by law. It's going to be hard to convince the Court  
24 that he should be allowed to travel under these circumstances.

25          MR. JETT: Okay. I hear you. We'll go over the

1 terms and go from there.

2 THE COURT: All right. Thank you. All right. Mr.  
3 Capps, why don't you have a seat over there with your  
4 attorney?

5 (Off the record, 3:18 p.m. to 3:23 p.m.)

6 THE COURT: Mr. Capps, I've now received back the  
7 signed order, and I'm holding up the third page. Can you see  
8 the signature from where you're standing?

9 THE DEFENDANT: Ye... is it -- it looks like the one  
10 I just signed.

11 THE COURT: All right. Well, I can hand it down to  
12 be -- so that we can be sure that that is, in fact, your  
13 signature.

14 THE DEFENDANT: You know what, I think I need to do  
15 it.

16 THE COURT: All right.

17 THE DEFENDANT: Yes.

18 THE COURT: All right. So, is the document that my  
19 courtroom deputy just showed you the order setting the  
20 conditions of release that you reviewed with Mr. Jett?

21 THE DEFENDANT: Yes, Your Honor, it is.

22 THE COURT: Did you have an opportunity to ask him  
23 any questions you had about it?

24 THE DEFENDANT: Yes, but you had already answered the  
25 question.

1 THE COURT: All right. So, do you have any questions  
2 for me?

3 THE DEFENDANT: I have a -- yes.

4 THE COURT: All right.

5 THE DEFENDANT: Okay.

6 MR. JETT: If you have a question, go ahead.

7 THE DEFENDANT: The competency in my work, Your  
8 Honor, involves travel. I understand that we need to take  
9 this up with another judge at another place and time. I  
10 understand the ramifications of the rules and regulations by  
11 which I need to abide. But I also wanted to say that my  
12 ability to travel to several consistent locations in the  
13 continental United States is critical to my success at work  
14 and being able to pay for all these things I've got to pay  
15 for. And if -- my question for you is, would you tell me if  
16 you have another idea about how to continue along this line?

17 THE COURT: I don't have any other idea at this time.  
18 I will tell you that it's my -- in reviewing the Pretrial  
19 Services report, you declined to answer a number of questions,  
20 which would have given your Pretrial officer more information  
21 with which to give me some alternatives. So, part of that is  
22 for a lack of information.

23 The purpose in setting these conditions and the purpose  
24 behind the Adam Walsh conditions are the protection and safety  
25 of the community. And without enough information to

1 adequately evaluate whether there are alternatives at this  
2 time, these are going to be your conditions.

3       You should visit very closely with your Pretrial Services  
4 officer. That officer is not working for the Government.  
5 That officer works for the Court and is -- anytime you're  
6 talking to that officer, you're talking to the Court. So you  
7 need to be fully forthcoming with your officer and discuss any  
8 options. This -- you were just arrested. We're making  
9 decisions very quickly. There may be additional information  
10 to be considered. I don't know. Like I said, I can tell from  
11 the Pretrial Services report that there's obviously  
12 information that we don't know or don't have. And so it is  
13 hard to say at this point whether any variation or  
14 modification of the conditions is warranted without a full  
15 understanding of the facts.

16       So, these are your conditions today. Once your intake  
17 interview has happened, once your attorney has had an  
18 opportunity to fully review the facts of the case, then he can  
19 determine what action may be warranted. But for today, this  
20 is -- these are your conditions.

21               MR. JETT: We'll --

22               THE COURT: They may or may not change. I can't tell  
23 you that. I can just say, based on today's record and where  
24 we are and the law, these are your conditions. All right.

25               THE DEFENDANT: Thank you, Your Honor.



1           THE COURT: All right. So, did you have enough time  
2 to go over the order? And you'll get a copy of it from  
3 Pretrial Services.

4           THE DEFENDANT: I did, Your Honor.

5           THE COURT: So, by signing this order, are you  
6 telling the Court that you fully understand your conditions,  
7 you agree to follow those conditions, and you understand what  
8 could happen if you do not?

9           THE DEFENDANT: I do, Your Honor.

10          THE COURT: Based on my review of your affidavit --  
11 based on my review of the circumstances, then, I hereby order  
12 you released after processing. You'll get a copy of the order  
13 from Pretrial Services. You'll need to see the Marshals  
14 Office for processing there. I believe your passport is going  
15 to be turned in to the Clerk's Office, so that will be taken  
16 care of.

17          Are we ready for arraignment, Mr. Jett?

18          MR. JETT: Yes, Your Honor.

19          THE COURT: You do have the right to have the charges  
20 against you be read out loud at this time, Mr. Capps, but you  
21 may waive the reading of the indictment. What would you like  
22 to do?

23          THE DEFENDANT: Waive the reading.

24          THE COURT: How do you plead to the charges, guilty  
25 or not guilty?

1 THE DEFENDANT: Not guilty, Your Honor.

2 THE COURT: A not guilty plea is entered for you.

3 Your case is set for trial in front of Judge Brown. She'll be  
4 issuing an order to set the trial date and pretrial deadlines,  
5 and Mr. Jett's office will make sure that you are kept  
6 notified of those deadlines.

7 Do you have any other questions about anything we've  
8 covered here today?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Anything else, Mr. Jett?

11 MR. JETT: No, ma'am.

12 THE COURT: From the Government?

13 MS. BERAN: Nothing from the Government, Your Honor.

14 THE COURT: Good luck to you, Mr. Capps. We are  
15 adjourned.

16 THE DEFENDANT: Thank you, Your Honor.

17 THE CLERK: All rise.

18 (Proceedings concluded at 3:29 p.m.)

19 --oOo--

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the digital sound recording of the proceedings in the above-  
entitled matter.

23 **/s/ Kathy Rehling**

**02/05/2020**

24 \_\_\_\_\_  
25 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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